UNITED
NATIONS

CEDAW

Convention on the Elimination of All Forms of Discrimination against Women

Distr.
GENERAL

CEDAW/C/1995/4
16 November 1994

ORIGINAL: ENGLISH

COMMITTEE ON THE ELIMINATION OF
DISCRIMINATION AGAINST WOMEN
Fourteenth session
16 January-3 February 1995
Item 7 of the provisional agenda*

IMPLEMENTATION OF ARTICLE 21 OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN

Analysis of article 2 of the Convention

Report of the Secretariat

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* CEDAW/C/1995/1.

94-45230 (E) 121294 13/12/94

I. INTRODUCTION

1. At its tenth session, the Committee on the Elimination of Discrimination against Women decided that it should prepare comments on particular articles of the Convention on the Elimination of All Forms of Discrimination against Women which would assist in the formulation of the Committee's general recommendations relating to those articles, in accordance with article 21 of the Convention.

2. At its twelfth session, the Committee decided to analyse article 2 of the Convention, including reservations which have been made to it, at its fourteenth session in 1995. It requested the Secretariat to prepare, as a pre-session document, an analysis of article 2 of the Convention, in the light of reports of States parties and other sources.

3. In preparing the present analysis, the Secretariat took into consideration the views expressed by the Committee, reports submitted by the States parties, questions asked by the pre-session working group and other research relevant to the issue.

II. BACKGROUND

4. The General Assembly unanimously adopted the Convention on the Elimination of All Forms of Discrimination against Women on 18 December 1979 (resolution 34/180), and it entered into force as an international treaty on 3 September 1981. Among international human rights treaties, the Convention takes an important place in bringing the female half of humanity into the focus of human rights concerns. The spirit of the Convention is rooted in the goals of the United Nations: to reaffirm faith in fundamental human rights, the dignity and worth of the human person and the equal rights of men and women. The Convention spells out what is meant by discrimination and how equality can be achieved. In so doing, the Convention establishes not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyment of those rights.

5. In order to extend beyond the existing conventions aimed at specific forms of discrimination, the Convention is designed to prohibit discrimination against women in all its forms and manifestations whether in fact or law. It gives effect to the realization of the need to change practices which are not themselves based on law, particularly in articles 2 and 3 of the Convention.

6. Article 3 gives positive affirmation to the principle of equality by requiring States parties to take "all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men".

7. Article 2 of the Convention states that:

"States Parties condemn discrimination against women in all forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

"(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

"(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

"(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

"(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

"(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

"(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

"(g) To repeal all national penal provisions which constitute discrimination against women."

8. Article 2 defines the general framework for the various types of obligations and tasks which States must fulfil to carry out their commitment to work effectively to eliminate discrimination against women in all its forms. The article also gives expression to the will of States to eliminate discrimination and ensures that they will use all means necessary and take action at all levels, directly or indirectly, to eliminate discrimination against women. The article emphasizes that States parties must take action in different areas such as legislation, administrative arrangements, financial provisions, decisions of public policy and relations with women's associations, institutions of social significance such as the international organizations concerning the equality and welfare of women. It also requires modification of laws, regulations, customs and practices. 1/

9. The importance of article 2 is that it sets out a framework which is then applied in all of the other substantive articles of the Convention. It generally requires States parties "to ensure" compliance by their Governments' organs with the Convention and "to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise" and "to modify or abolish existing laws, regulations, customs and practices".

10. The general application of the article can be seen in the Committee's recommendations on violence against women, a term that does not exist in the Convention but which, the Committee has concluded, is implicit in its articles. In its general recommendation 19 on violence against women, 2/ the Committee concluded that gender-based violence was discrimination in terms of the Convention. It then concluded:

> "It should be emphasized, however, that discrimination under the Convention is not restricted to action by or on behalf of Governments (see articles 2 (e), 2 (f) and 5). For example, under article 2 (e) the Convention calls on States parties to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise. Under general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation." 2/

III. ANALYSIS OF ARTICLE 2

"States Parties condemn discrimination against women in all forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake ..."

11. Discrimination against women is defined in article 1 of the Convention as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field". By this definition, discrimination is not limited to legal concerns, but encompasses any discrimination suffered by women on the basis of sex whether through law, from the operation of laws that are assumed to be gender-neutral or because of social, economic and cultural factors to which women are subject. Consequently, there are both obligations of conduct and obligations of result for States parties.

12. The policy of eliminating discrimination is further elaborated in article 3, by which States parties agree to "take in all fields, in particular the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on basis of equality with men".

13. Both articles 2 and 3 deal with the general legal and policy measures needed to implement the Convention. For the purpose of analysing the implementation and approach to article 2, it is useful to set out some of the most obvious relations and connections to other articles.

14. Article 3 sets out as its basic proposition that the exercise and enjoyment by women of the fundamental freedoms and rights guarantees in article 2 rests on

and requires the full development and advancement of women within society. While legislation is specifically mentioned as one means of ensuring this advancement, the obligations of States parties are not limited to such action alone but include the full range of administrative, policy and educational measures available to address the political, economic, social and cultural factors which impede the development and advancement of women.

15. The main issues addressed by article 3 are mainly the specific endeavours, such as the development of national machinery, e.g., women's ministries, departments or bureaux, as well as any other policies or programmes that are specifically designed to promote actions by States parties to integrate women and an awareness of gender issues into the mainstream activities and policies of the State and into society at large.

"(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realizations of this principle"

16. This subsection requires that the principle of the equality of women and men be guaranteed in the national constitutions of all States parties. Upon ratification, States parties undertake to review their constitutions, civil codes or basic law and eliminate any discriminatory provisions contained within them. If the equality of men and women is not already explicitly guaranteed, States parties are expected to indicate in their reports what initiatives are under way to include such guarantees and set out the time frame for proposed reforms.

17. The Committee has noted that, in recent years, some States parties have complied with this requirement. Reforms have included recognition of the judicial equality of men and women in marriage, administration of estates and responsibility for children.

18. Some countries reported on efforts undertaken prior to the ratification of the Convention to improve the social status of women. The principle of equality was enshrined in several provisions of the constitutional law concerning fundamental rights in Austria, in the Act on Equal Status between the Sexes of Norway, in the Act concerning Equality between Women and Men of Sweden, in the Charter of Rights and Freedoms and human rights legislation in Canada, which also included sex as a prohibited ground of discrimination.

19. Others explicitly embodied the principle of equality between the sexes in their constitutions themselves. Special articles guaranteed equality of rights between men and women in all areas of political, economic, social and cultural life. Their constitutions reflected the requirements of the Convention by devoting special provisions to guarding the equality of rights of men and women in political and public life, before the law, in education, employment, health, in marriage and family relations. They reported that equality between the sexes had become a constitutional principle before the enactment of the Convention.

The abolition of discrimination against women was part of the general proscription of any discrimination by those States. They reported that there was no need to change or modify the legal and practical systems relating to the status of women after ratification and enactment of the Convention. However, a significant number of new legislative and social measures for women had been introduced since the entry into force of the Convention in accordance with the economic development that had taken place in those countries and many of the Convention's provisions had been given detailed interpretation by legislative instruments.

20. The exercise of constitutional rights was reported to be guaranteed by legislative, administrative, economic and social measures and the necessary material conditions for achieving that equality: equal opportunities for women in education and training, equal professional treatment, social security, equal pay for equal work, paid leave, protection of the interests of mother and child, free health care, equality in socio-political and cultural activities, in family relations and through the adoption of special measures to enable women to combine motherhood with work.

21. Several countries cited articles in their constitutions guaranteeing equality of all citizens in special fields. The constitutions ensured equality in political rights, before the law and in employment relations.

22. Besides constitutional and legislative guarantees to ensure equality for women and men in all fields of life, a number of States parties reported on their ratification of or accession to a number of other international conventions aimed at eliminating discrimination against women, including the Convention on the Political Rights of Women, the Convention on the Nationality of Married Women, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, International Labour Organization (ILO) conventions No. 45, on women doing underground work, No. 100 on equal remuneration for men and women workers for work of equal value, No. 103 concerning maternity protection and No. 111 concerning discrimination in employment and occupation, and the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention against Discrimination in Education.

23. The Committee has noted that not all constitutions proclaim the principle of equality with sufficient clarity and affirmation. Some constitutions and laws did so tacitly through a provision which prohibited discrimination by sex, while others referred to equality between citizens, with no specific mention of male or female gender. Others consistently used the masculine gender to include women; in referring to citizens, preference was given to the male gender and, through weight of tradition, to such language that created or maintained discriminatory practices.

24. The Committee has also observed that enshrining the principle of equality in the constitution is necessary so that it can not easily be overturned or repealed because of a change of policy or administration. In the event that a State party claims that no de facto discrimination to women exists or that

equality is ensured through ordinary legislation, but where no specific guarantee of equality or non-discrimination is contained in the constitution, States parties have been reminded of the need for such provisions. On occasion, the Committee has asked whether the principle of equality is limited to civil rights or whether it also includes political and economic rights.

25. Where the constitution, basic law and other relevant legislation already embody the principle of equality, the Committee has inquired about the effective implementation of these guarantees and the legal resources which are available where legislation is not in conformity with the constitution. This includes matters such as the procedure and forum for invoking infringements of constitutional guarantees and the number of cases which come before constitutional courts because of violation of equality decrees.

26. Even though the national constitution embodies the principle of the equality of men and women, it may be too vague or general to provide substantive protection for women, or women may be unable to use it directly as a vehicle to have their rights enforced.

27. The Committee has recommended that the Governments that have not yet done so should establish appropriate institutional procedures whereby the application of a revised set of laws and administrative measures could be effectively enforced from the village level up and could be adequately monitored so that individual women could, without obstruction or cost to themselves, seek to have discriminatory treatment redressed. Legislation that concerns women as a group should also be effectively enforced and monitored so that areas of systematic or de facto discrimination against women can be redressed and a positive action policy developed.

"(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women"

28. This subsection requires States to prohibit discrimination through the adoption of legislation and other measures, such as administrative or policy initiatives, and to establish sanctions for violations where appropriate. This ensures attention to legislative action below the constitutional level which is required to implement the convention and which often provides the necessary legal ground or instrument to protect specific rights.

29. Discrimination against women is sometimes explicit and at other times it is concealed or indirect. Some discriminatory practices are so deeply rooted that they are perceived as the result of unchangeable conditions. Some States like Norway, Denmark and Finland have established comprehensive legislation on equality between men and women in every field. This legislation is the expression of the political will of those States to realize the purpose of the Convention as a national law. The various measures adopted on the basis of this legislation are being implemented effectively. There are also a number of States parties that have contributed to taking positive actions by means of an official announcement of the promise to execute the policy ensuring equal

opportunity in order to reduce the gap between de jure and de facto discrimination on the basis of article 4.

30. Almost all States parties that reported on this subject cited sanctions and remedies available to deal with violations of constitutional or legislative provisions guaranteeing equal rights of men and women and non-discrimination on grounds of sex. Violations of the right to equality constituted an offence liable to prosecution in cases specified by the law.

31. Several States specified that discrimination against women was a separate offence punishable under law. Cuba provided for imprisonment for periods ranging from six months to three years or a fine or both for anyone who discriminated against another person. Mongolia specified that any attempt to deny women equal rights in whatever way was punishable by law. Hungary qualified discrimination of any kind against citizens on grounds of sex, etc., to be a severely punishable offense.

32. Some offences against equality were enumerated in the reports, for example the hindrance of citizens, including women, in the exercise of their political, labour and other rights and freedoms, such as the right to vote, the refusal to employ a pregnant or nursing woman and dismissal or reduction of wages or salaries on those grounds.

33. Most States provided for judicial remedies through courts or administrative channels. Women could appeal to the civil courts if contracts restricted their legal capacity. Complaints in family affairs could be brought before family courts and labour disputes before labour courts.

34. In addition to judicial remedies through the courts, some States reported an administrative mechanism for revising any regulations of a discriminatory nature or for remedying individual actions violating the principle of equality between the sexes. For example, the office of the public prosecutor has the right to demand the rescinding of illegal regulations, provisions, instructions, decisions, orders, etc., by any person, organization or enterprise.

35. The Committee has observed from States parties reports that discrimination is varied and involves many different attitudes. In some countries the situation is clear, while in others it is less clear. Consequently, the Committee recommended that States parties should:

(a) Strive to identify discriminatory situations;

(b) Consider whether existing laws were sufficient or not to guarantee the constitutional principle of equality;

(c) Consider whether the administrative organs were doing enough to uphold the principle of non-discrimination;

(d) Punish violations. These evaluations must give rise to legislative or other initiatives required to guarantee non-discrimination and to define and apply sanctions.

36. The Committee had inquired from the States parties about the status of women and legislative measures undertaken to implement articles 2 and 3 of the Convention; the legal capacity of women in civil rights; sanctions and remedies available to women for violations of equality guarantees; and whether these were considered criminal matters or lesser offences. Of parallel concern was the sort of remedies that were available for discrimination that arose from non-State actors and how such complaints could be pursued.

37. The Committee stressed that once the anti-discrimination and equality guarantees of article 2 were reflected in national legislation, the next stage was to ensure their effective implementation. In these circumstances, States parties were required to ensure that the legislation was respected.

38. On occasion, the Committee has observed that protective legislation could in fact constitute a form of discrimination. It has also been alert to any qualifications or limitations in equality guarantees that may be found in constitutional or legislative provisions. In this regard, the Committee has asked about the meaning of essential equality, exceptions to women's civil and legal powers in business matters, the protection of legitimate rights and interests of women and provisions in legislation which exempted certain religious communities from compliance with equal rights guarantees.

39. Some countries have adopted the practice of drafting new legislation in gender-neutral language. The Committee has praised this initiative, and has asked how such initiatives have been received by the population, in particular women at large. The Committee has recommended that legislative and/or other measures should be adopted and implemented to secure for men and women the same right to work and to unemployment benefits, as well as to prohibit, through, inter alia, the imposition of sanctions, dismissal on the grounds of sex. Legislative and other measures should be adopted and implemented.

"(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination"

40. This subsection is one of the most important provisions of article 2 because it deals with the judicial bodies that States parties must establish to guarantee the legal protection of women's rights and with the initiatives they must take to ensure that such legal protection is effective. It also reiterates the requirement that States parties must establish legal protection of the rights of women on an equal basis with men and further requires that the effective protection of women from any act of discrimination must be ensured through national tribunals and other public institutions which are competent to adjudicate complaints. In this connection, the Committee often asks what legal avenues, institutions or machinery exist to assist women in the exercise of their rights.

41. States parties reports indicate that experience in this measure of protection is varied and determined by nature and scope of the recognition given

to women's rights. In fact, there are court systems in all countries but not all of them are fully competent, by custom or law, to intervene in cases involving violations of the rights of women. Most of these violations are concerned with women's family rights, their reproductive capacity, their exercise of sexuality, labour discrimination, personal development outside the home and violence within the home. Many countries do not have legislation that protects women from such violations and there are no legal protective agencies where women can uphold their rights in these situations.

42. In order to access the level of practical implementation, the Committee has inquired into the extent to which women actually use the courts or tribunals to enforce their rights, the degree to which women are aware of their rights, the efforts made by States parties to encourage awareness of the rights, the legal or other remedies available for their infringement, the number of cases brought before the courts and the sanctions or penalties. It often asks whether legal aid and advice is available to women wishing to bring discrimination cases forward and whether such aid is free.

43. The Committee has also asked about actual cases before the courts and the existence of legal precedents concerning discrimination against women, since these would constitute evidence of consideration of such issues by national courts and the presence of an existing legal foundation for future litigation. Precedents and decisions may also indicate areas where further legislative intervention is needed to suggest the persistence of gender bias within the judiciary or the legal system as a whole.

44. Some States parties reports indicate that, in some countries, civil courts have full competence to deal with family law but exclude the questions raised in this provision. In other countries there are justices of the peace who can deal with family disputes; but not all States parties have them. In certain countries criminal courts are empowered to handle cases of ill-treatment, but incomplete legislation deters them from trying cases of sexual aggression. Often, legislation places upon the victim, usually a woman, the burden of proof. This is extremely difficult, since the laws are complex and impose numerous requirements as evidence of aggression, violence or oppression. For example, women who have been victims of physical attacks must submit evidence to the examining medical experts. This often discourages them from denouncing the attack or claiming punishment for the aggressor.

45. Most States parties reported on measures undertaken to promote and ensure the full equality of women in political, economic, social and cultural fields. The nature of measures varied according to the specific socio-economic and political systems of the States.

46. For example, Canada reported that a national machinery had been set up to ensure that the Government considered the concerns of women. The minister responsible for the status of women ensured that the Government's principles of elimination of discrimination and the protection of equal opportunity for women in all areas of the country's activities were applied in all government programmes and policies. Coordination of government activities relating to the status of women was accomplished through Status of Women in Canada, a central agency of the Government. The Canadian Advisory Council on the Status of Women,

an independent organization funded by the Government, brought before the Government and the public matters of interest and concern to women.

47. Efforts in Sweden to achieve equality between women and men included measures affecting men as well as women. The Committee on Equality between Men and Women was conducting a questionnaire survey of 5,000 men, with a number of in-depth interviews, to elucidate male attitudes concerning equality between men and women. A national Plan of Action for Equality "Step by Step" has been set up.

48. Public machinery for the promotion of equal status between the sexes has been built up in Norway. The Family Affairs and Equal Status Department of the Ministry of Consumer Affairs and Government Administration coordinates government policy on equal status questions. The Equal Status Council draws attention to circumstances that counteract the equal status of women in family public life. As a follow-up, the Government set up a national plan to improve the status of work in all fields.

49. The achievement of de facto equality of women with men was considered a basic objective of social change by some States parties and securing the greatest possible participation by women in that process was also perceived to be the most effective means for bringing about an improvement in the status of women. The promotion of women, particularly with regard to vocational qualification, was a task of society and the State and was cited as a constitutional principle by several States.

50. In another State, women's organizations were helping to educate women to raise their scientific and cultural level. They provided legal advice and carried out in-depth investigations on the needs of women and made recommendations to the Government. In still another State, women participated in discussions on draft laws, particularly in the draft constitution and the family code.

51. In the Philippines, the National Council on the Role of Filipino Women monitored measures taken by all ministries, bureaux, agencies and other government offices to implement the provisions of laws relating to the elimination of discrimination against women and their integration in partnership with men into the national development effort.

52. The Committee has recommended the establishment of:

(a) Legal or administrative bodies which are competent to receive or adjudicate complaints of discrimination by individual women or groups of women;

(b) Other machinery or agencies to advance the ending of discrimination and the furthering of the equality of women.

53. The second category recognizes national tribunals as an integral part of the national machinery and access to those tribunals or other public institutions becomes a critical question. Recommendations have been made to States parties to implement legal literacy and legal aid programmes in an effort to increase the access of women to judicial arbiters.

54. After reviewing reports of States parties, the Committee noted that a number of States parties had established national machinery for the improvement of the status of women, especially during the United Nations Decade for Women: Equality, Development and Peace (1975-1984). However, for more effective implementation of the Convention, the Committee recommended that the States parties establish a high-ranking organization that could give advice on the possible influence and effect of all policies upon women, monitor the actual conditions of women, plan policies for the elimination of discrimination and have financial resources, responsibility and power to carry out effectively measures for the establishment policies. The Committee also urged that States parties strengthen the functions of the national machineries. It noted that there were various forms and functions of the national machinery in each country.

55. Some States parties reports indicate that some countries have established commissioners within the national machinery or ombudsmen, officers who are empowered to receive and investigate complaints about discrimination against women. Others indicate that this can be beneficial to women, especially where reference is not made to such bodies. In this regard the Committee has asked if there are plans to establish them or whether those tasks are already performed by another body. Where they already exist, the Committee has also asked how they function; the procedure for bringing complaints; how they control the implementation on the Convention and other equality measures; who may appeal; what kind of action is taken on complaints; whether the agency operates under instructions from or is independent from the Government; and why the number of complaints has been so few.

"(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation"

56. This subsection requires States parties to ensure that public authorities and institutions refrain from engaging in any act or practice of discrimination. This provision is also intended to ensure that women receive equal treatment before the courts and by the administrative bodies and personnel who implement government policies and through whom legislation takes effect.

57. Issues related to the obligations under this provision include, with regard to ensuring that judicial processes do not discriminate, the appointment of women judges and prosecutors; and the gender composition of tribunals which hear sex discrimination cases. With regard to instances of discrimination among persons under public custody, issues such as sexual assault, torture or other violations of the human rights of women while under detention or otherwise within the control of the State; the conditions of incarceration of women, especialiy those with children; and the number of prisoners of conscience who are women.

58. Some restrictions reported by States parties indicate discrimination in the meaning of this article of the Convention. In the reservations made upon ratifying the Convention, a number of States parties noted restrictions on the

application of different articles of the Convention and in their national legislation. For example, Canada reported that domestic workers were not protected by human rights acts in some jurisdictions of the State. There were clauses relating to maternity leave, equal pay and the exclusion of domestic workers from the protection afforded by the Labour Code.

59. Concern was raised in some States parties reports concerning their national laws based on, among other things, religious law, which precluded compliance with the provisions of the Convention. A number of these States have entered reservations on this article. Where this has occurred, the Committee has asked representatives how their Government intends to reconcile its obligations and has requested more information about the nature and extent of any conflicts.

"(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise"

60. Under this provision, a State accepts the obligation to prevent and deter private acts of discrimination, to investigate and negate their harmful consequences and to provide for compensation or sanctions for the performance of such acts, such as by penalties of a civil or criminal nature. Private individuals or organizations, such as religious or other organizations, which practice discrimination may be required to forfeit public advantages in direct or indirect ways. While States may not be responsible for the actions of private parties that are incompatible with the standards of conduct that States themselves are obliged to observe, they have an obligation to exercise due diligence to prevent them.

61. States are responsible, in that sense, for the failure to act appropriately to meet the international obligations by which they are bound even when a substantive breach originates in the conduct of private natural or legal persons.

62. It is expected that the public sector should strive to identify and transform these discriminatory attitudes and practices within public bodies and make the necessary corrections. Where discriminatory values persist within private organizations, they should be treated in the same way. In most countries it has been found that the States are making efforts in the public sector.

63. The Committee has recommended that each State be considered responsible for upholding the constitutional and legal principles of equality in all spheres of social life. Hence, its action must extend beyond its own organizational limits. It must create the machinery which will guarantee that all persons, groups, enterprises and organizations enjoy these rights.

64. For example, in one State, various social and women's organizations were reported to have worked for family education and the proper understanding of maternity as a social function. Family clubs, established at the community level, made a specific social approach to family upbringing in a spirit of sexual equality and with a view to the total eradication of stereotyped roles

for men and women. Social and legal aid offices attached to health centres and the social services departments of the Government were included in the educational process to overcome old customs.

65. The Committee has noted the positive measures aimed at supporting equal opportunity in public areas, which aided in the adoption of positive measures on equal employment by private sectors because of the fact that the State was the greatest employer.

66. The State must accordingly investigate, correct, compensate and, where appropriate, punish violations of such discrimination in accordance with the provisions of the Convention. Where sexual discrimination is practiced, it is the responsibility of the State to condemn such discrimination by private persons, organizations or enterprises and the State should take immediate measures. These measure should include taking appropriate actions and monitoring the private acts that constituted any discrimination against women. In addition, States are required under article 16 to take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.

67. The Committee's view about this subsection is clearly reflected in its general recommendation 19 on violence against women which states that "gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men". 2/ It further states that "family violence is one of the most insidious forms of violence against women"; it is prevalent in all societies; and within family relationships, women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault and mental and other forms of violence, which are perpetuated by traditional attitudes.

68. The Committee has noted with concern that discrimination against women by persons, organizations or enterprises still exists in some countries and it requested that States parties inform the Committee of the action they are taking or they have taken through their national periodic reports to prevent discrimination against women in public and private organizations and the penalties imposed on officials, organizations and persons guilty of such discrimination.

"(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women"

69. Article 2 (f) of the Convention requires States parties to take appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women. In this sense, States parties accept the obligation to undertake comprehensive law reform. But it also implies that the States parties must use public means to address discriminatory customs and practices. Article 5 (a) elaborates on this duty by explaining that States parties agree to modify the

social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.

70. By article 2 (f), taken together with article 5 (a), States parties agree to reform personal status laws and to confront practices, for instance of religious institutions, that, while perhaps claiming to regard the sexes as fundamentally different, if equal in principle, justify discriminatory practices.

71. Obligations that States parties have assumed directly and indirectly under the Convention also arise when women suffer from the operation of customary laws with respect to property, when family members execute discriminatory wills, or banks obstruct equal opportunities of women for commercial initiatives by denial of equitable loans. States are obligated under article 13 (b) to take appropriate measures to eliminate discrimination against women in areas of economic and social life and in particular the "right to bank loans, mortgages and other forms of financial credit".

72. One State, for example, reported that its legislation included a provision denouncing work that was no longer considered a step towards social progress but limited the employment opportunities of women and contradicted the principle of equality of treatment and opportunity between men and women workers. The Government had also initiated action to abolish discriminatory provisions in the national law. That included amending an act under which women lost their ethnic status upon marrying a non-member of the ethnic group but where that did not happen to men of the ethnic group; changing legislation so that special conditions for maternity benefits were eliminated in an unemployment insurance act; and amending the criminal code so that it provided equal protection to male and female victims of a sexual offence.

73. A number of measures had been introduced to modify social and cultural conduct derived from stereotypical views of women's and men's roles. One national plan of action contained a section on stereotypes in broadcasting and the print media, as well as in government communications. A task force on sex-role stereotyping in the broadcast media presented a wide-ranging programme for eliminating sex-role stereotyping from broadcast media. A project on media observation had been launched in another State primarily to encourage television watchers to develop a critical attitude towards the way in which television presented women.

74. In yet another State, a nationwide publicity campaign had been organized to break down past ideals and customs upholding male superiority, to educate the public on the legal system, to condemn discrimination, maltreatment, humiliation or even persecution of women and children and to motivate society to fight such unacceptable practices.

75. Educational efforts and policies to implement new social programmes in another State were cited as efforts to remedy situations preventing women's advancement. International Women's Year: Equality, Development and Peace

(1975) was reported to have had an impact on arousing women's awareness of their rights.

76. It was reported by one State that cultural attitudes which obliged women to care for the household and prevented them from enjoying the fruits of progress had led to cases of irresponsible paternity. The Government, to remedy that situation, had established a comprehensive population policy, which also promoted an improvement in the educational level of women. A Women's Office within the Office of the Attorney for the Poor directed and channelled assistance to women to enable them to carry out their duties as mothers.

77. The Committee has noted that, in certain national contexts, customs and customary laws have affected women adversely. In many countries it is not usually acceptable for women to participate in activities of communal leadership, and social acceptance of male-dominated kinship hierarchies makes it difficult for women to attempt transformation of their position in society. In addition, customary laws of patrilineal inheritance, and marriage and divorce laws that favour men, deny women socio-economic independence, while some customs, such as the communal ownership of land, may be beneficial to both women and men. The Committee has recommended the necessity for States parties to find means of rejecting practices that are detrimental to women.

78. It has noted that women's groups in some countries, however, have begun to organize effectively within religious traditions to forestall the repeal of just laws and to raise awareness of the true nature of rights to be enjoyed by women if the spirit of religion were accepted without distorted interpretation by men. They have done this by taking the matter to the courts or by popularizing the issues of social justice.

79. In other countries, where the State has made an explicit commitment to secularism, women have been reported as attempting to challenge religious practices that discriminate against women, by invoking the equal protection clauses of their constitutions, which provide that all women, regardless of religion, should be treated alike. In addition, they have been pushing for a uniform civil code. The secular strategy is particularly effective in a multiracial, multireligious society.

80. The Committee has recommended that it is imperative that States parties strengthen their actions on equality and against discrimination by creating new provisions that uphold these principles; void biased interpretations of cases of discrimination; be aware of the discriminatory content of existing laws and practices; and eliminate such laws by appropriate action.

"(g) <u>To repeal all national penal provisions which constitute discrimination against women</u>"

81. This subsection requires States parties to repeal all national penal provisions which constitute discrimination against women. Since discrimination may also arise from the absence of protection for women in penal law, this obligation encompasses not only the modification or abolition of existing laws

which are discriminatory but also the adoption of new laws to address existing gaps in the legislation.

82. The Committee has noted that general areas of concerns have arisen in the reports of States parties in conjunction with this provision: the regulation of prostitution; pornography; laws governing rape, sexual assault, including the protection of women from rape within marriage; sexual harassment; variation in penalties for men and women for adultery; the regulation of abortion through criminal law; female circumcision; and other issues connected with the protection of women from violence.

83. More specifically, the Committee has inquired to what extent the States parties have protected women in criminal courts in cases of rape and other sexual offences; who may report such incidents; whether offenders are actually prosecuted; and whether a woman could testify against her husband as a witness in court. The Committee has also inquired whether sexual harassment was taken seriously, and has asked about legislative measures taken to combat it.

84. Other issues include the impact of legal prohibitions against dowries and the effectiveness of legal protection against dowry-related deaths and disfigurements. In addition to punishing offenders, the Committee has encouraged States parties to develop policies to prevent the recurrence of such acts.

85. Sanctions for such crimes in some countries may also vary according to the age or marital or social status of the women involved. For example, penalties for rape may be harsher when victims are girls rather than women. The Committee has inquired into the reasons for such variation, including the stereotypes, the rationale behind the severity of punishment for rape, and the difference in penalties for men and women where adultery was an offence.

86. The Committee has emphasized the special importance of the work of penal codification and all the procedures that this implies in the administrative branch, including prisons. Legislation on personal attacks and sexual aggression is of particular relevance. In nearly all such legislation men are favoured and women, although victims, are blamed. The treatment meted out to prostitutes is typical of the discriminatory character of penal legislation. Prison regimes also discriminate against women as regards conjugal visits, remuneration for prison work and the possibility of training in prison.

87. The Committee has also expressed concern about the legality of abortion, whether abortions are legal only under certain circumstances or in certain places such as hospitals, and whether women or doctors face sanctions when they are performed.

88. The Committee has recommended that States parties must act rapidly and firmly in repealing all legal provisions, regulations and norms, whether penal, civil, commercial, labour-related or of any other kind, that contain discriminatory measures; and that States must amend their legal and prison systems for men and women and promote equality in such systems in meeting the needs of both sexes.

89. The Committee has also recommended that States should inform them of any initiatives that run counter to laws and regulations on discrimination, and that they must report any aspects of the penal system and its administrative effects that have an impact on the exercise of women's rights.

IV. RESERVATIONS TO ARTICLE 2

90. Unlike the Convention on the Elimination of Racial Discrimination, which provides that a reservation is to be considered incompatible with the Convention if at least two thirds of the States parties object to it, the Convention on the Elimination of All Forms of Discrimination against Women provides no similar procedure for deciding authoritatively whether a reservation is valid, apart from the possibility of reference of the issue to the International Court of Justice under article 29 of the Convention, a provision rendered largely ineffective by the many reservations to that provision. The only feasible options open to a State party which considers that a reservation is incompatible with the Convention are to file an objection to the reservation and to raise the matter at meetings of the States parties.

91. The absence of such a procedure has meant that the issue has given rise to a continuing dispute among certain States parties, some of whom have expressed strong objections to many reservations on the ground that they are incompatible with the object and purpose of the Convention, while others have strongly defended their right to enter reservations to the Convention without having other States act as self-appointed arbiters of their validity. To date the States parties have been unable to resolve the issue.

92. The World Conference on Human Rights urged the eradication of all forms of discrimination against women, both hidden and overt. The United Nations should encourage the goal of universal ratification by all States parties of the Convention on the Elimination of All Forms of Discrimination against Women by the year 2000. Ways and means of addressing the particularly large number of reservations to the Convention should be encouraged. The Committee on the Elimination of Discrimination against Women should continue its review of reservations to the Convention. States parties should be urged to withdraw reservations that are contrary to the object and purpose of the Convention or are otherwise incompatible with international treaty law.

93. Reservations to article 2 are of particular concern. Article 28 (2) states that reservations which are incompatible with the object and purpose of the Convention are not permitted. Article 2 outlines the actions required by the State party concerning reservations, especially those which are unlimited in scope, which indicate a lack of intention to implement the principle of equality and which are deemed incompatible with the object and purpose of the Convention. However, reservations to other articles are also taken to indicate a lack of commitment to the equality for women because they undermine the agreement contained in this article "to pursue by all appropriate means and without delay a policy of eliminating discrimination against women". The Committee continues to encourage States parties to withdraw their reservations as soon as possible.

94. Since the adoption of the Convention, a few States parties have made reservations with regard to their obligations under article 2, usually to permit non-compliance should religious-based law conflict with the provisions of the Convention. An example of such a general reservation is that of the Government of Bangladesh, which did not consider as binding upon itself the provisions of article 2 as they conflicted with Shariah law based on holy Qur'an and Sunna. A similar reservation was entered by the Government of the Bahamas, which stated that it did not consider itself bound by the provisions of article 2 (a).

95. Egypt's reservation expresses willingness to comply with article 2, provided that such compliance did not run counter to the Islamic Shariah. A reservation by Iraq stated that approval of and accession to the Convention should not mean that the Republic of Iraq was bound by the provisions of article 2 (f) and (g). Preservation of religious or customary laws appears basic to the reserving States parties in question under the Convention and may be regarded as the sine qua non of their adherence.

96. While not specific to article 2, the Government of the Libyan Arab Jamahiriya has filed a general reservation stating that there should be no conflict between accession and the laws or personal status derived from the Islamic Shariah.

97. The Government of Morocco has filed a declaration to express its readiness to apply the provisions of article 2 provided that they were without prejudice to the constitutional requirement that regulated the rules of succession to the throne of the Kingdom of Morocco and they did not conflict with the provisions of the Islamic Shariah. It noted that certain provisions contained in the Moroccan Code of Personal Status accorded to women rights that differed from the rights conferred on men and might not be infringed upon or abrogated because they derived primarily from the Islamic Shariah, which strove, among its other objectives, to strike a balance between the spouses in order to preserve the coherence of family life.

98. The Government of Tunisia has filed a general declaration stating that it would not take any organization or legislative decision in conformity with the requirements of the Convention where such a decision would conflict with the provisions of chapter 1 of the Tunisian Constitution. Article 6 of chapter 1 requires equal treatment before the law of all citizens and therefore could be taken to amplify the Women's Convention in domestic law. 3/ The first article of the chapter explains that Islam is the official religion and in so far as Islam is interpreted to require the elimination of discrimination against women it would not conflict with the Convention and not be a limitation of Tunisia's obligations under the Convention.

99. The Government of New Zealand, on behalf of the Cook Islands, reserved the right not to apply article 2 (f) and article 5 (a) to the extent that the customs governing the inheritance of a certain Cook Islands chief titles might be inconsistent with those provisions.

100. Reservations to article 2 that exclude the establishment of means to amend national laws and culture to eliminate discrimination against women are highly

questionable since one of the primary objectives of the Convention is an obligation of means.

101. The Committee regards the question of reservations to the Convention as a very serious matter and routinely asks States parties about the status of any reservations to articles of the Convention, the particular circumstances which the State party believes requires them, and any plans pending to withdraw them. Conversely, the Committee commends the good faith of States parties where the Convention has been ratified without reservations.

V. CONCLUSIONS

102. In ratifying or acceding to the Convention on the Elimination of All Forms of Discrimination against Women, States committed themselves to guaranteeing women and men equal rights in the political, economic, social, cultural, civil and any other field of life, abolishing existing laws, regulations, customs and practices that discriminate against women and promoting the full development and advancement of women in all walks of life.

103. It has been indicated that, to be able to expose and oppose discrimination, States parties need to recognize it. The States parties reports indicate that discrimination against women is revealed only partially in terms of nature, scope, degree and, most important, its impact on women. Gender discrimination ranges from the explicit denial of equal rights to women to the inability of women to enjoy their recognized rights because they are prevented from doing so by policies and practices in the society.

104. Most States parties have embodied the principle of equality in their constitutions or other basic laws. Others have abolished discriminatory laws from their legal systems, and have widely implemented the laws guaranteeing the equality of women. Still others, in all regions, have not removed all discrepancies from their laws and as a result women still encounter legal barriers.

105. Although they are enumerated in a separate article of the Convention, measures to ensure the equality and advancement of women for the purpose of guaranteeing to women the exercise and enjoyment of human rights are intimately connected, both practically and conceptually, to the anti-discrimination measures covered by article 2. The Convention allows for the interpretation and application in the most appropriate ways to the social and cultural structure of each State but with the premise that the States parties will follow the principle of non-discrimination on the basis of sex.

106. In preparing its general recommendation on article 2, the Committee may wish to provide guidance to States parties on what it considers to be the obligations of States parties under this article to ensure compliance.

Notes

1/ Rebecca J. Cook, "Reservations to the Convention on the Elimination of All Forms of Discrimination against Women", Virginia Journal of International Law, vol. 30, No. 3 (Spring 1990), p. 672.

2/ Official Records of the General Assembly, Forty-seventh Session, Supplement No. 38 (A/47/38), chap. I.

3/ A. Blaustein and G. Flanz, eds., Constitutions of the Countries of the World: Tunisia 5:, 1977.